

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION

TENTATIVE RULINGS

EVENT DATE: 09/22/2020

EVENT TIME: 08:20:00 AM

DEPT.: 20

JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2019-00526921-CU-BC-VTA

CASE TITLE: SAN ALICIA HOA VS. MASON

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion - Other (CLM) - for Order Imposing Terminating Sanction against Defendant Wallace Erick Mason

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 08/24/2020

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Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts promptly at 8:30 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at [Courtroom20@ventura.courts.ca.gov](mailto:Courtroom20@ventura.courts.ca.gov) or by fax to Judge Guasco's secretary, Lori Jacques at (805) 477-5892.

**Do not call in lieu of sending an e-mail or fax.** If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, all cases assigned to Courtroom 20 are assigned for all purposes (including trial) to Judge Guasco.

**COVID-19 NOTICE:** Pursuant to the administrative orders of the Presiding Judge and the Civil Reopening Plan, effective June 10, 2020, and until further notice, all attorneys and self-represented parties in law and motion hearings must appear telephonically via Court Call; there shall be no personal appearances in the courtroom without the prior express approval of Judge Guasco. You may contact Court Call as follows: [www.courtcall.com](http://www.courtcall.com) or call 888-882-6878.

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The following is the Court's tentative decision concerning the motion of plaintiff, San Alicia Homeowner's Association ("HOA"), for terminating sanctions against defendant, Wallace Erick Mason ("Mason"):

The Court GRANTS the motion for terminating sanctions against Mason for the following reasons:

(1) Terminating sanctions are a last resort when all other means of compelling lawful discovery have failed. (*Motown Record Corp. v. Superior Court* (1984) 155 Cal.App.3d 482, 489.) The purpose of discovery sanctions is to gain compliance, not to punish. (*Ibid.*) The Court should employ only those sanctions necessary to ensure discovery from the less to the more severe as each situation dictates. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496.) At some point, however, a court may impose harsher sanctions to prevent a party from gaining any benefit or advantage from willfully failing to comply with the party's duties or the court's orders concerning discovery. (*Collisson & Kaplan v. Hartunian* (1994) 21 Cal.App.4th 1611, 1619.)

(2) Termination of the plaintiff's action or the defendant's defense, however, is appropriate where the record before the Court demonstrates that terminating sanctions are the only way to avoid irreparable prejudice to the aggrieved party and to avoid the offending party benefitting from his or her misconduct. (Code of Civ. Proc., § 2030.030, subd. (d); *Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1106; *Collision & Kaplan v. Hartunian*, *supra*, 21 Cal.App.4th at p. 1619.)

(3) On February 10<sup>th</sup> and 20<sup>th</sup>, 2020, this Court issued its orders compelling Mason to respond to HOA's discovery by a date certain. Mason has not responded. Neither he nor his counsel of record has appeared at any of the several recent hearing in this action. HOA's counsel represents to the Court that neither Mason nor his counsel of record have responded to repeated inquiries necessary to move this case along.

(4) Accordingly, the Court finds that Mason effectively has abandoned his defense in this action.

(5) Further, the Court finds that there is no sanction short of terminating Mason's ability to defend the action by striking his answer which can remedy the discovery violations at issue. Monetary sanctions have not worked. Issue, evidence, and instructional sanctions are ineffective in the absence of discovery responses from Mason.

(6) The Court, therefore, finds it has no alternative to prevent the prejudice certain to befall HOA arising from Mason's nonresponsiveness other than to terminate the action and strike Mason's Answer.

(7) The Court GRANTS HOA's motion for terminating sanctions.

(8) The Court enters its ORDER striking Mason's Answer.

(9) The Court sets the matter for an OSC re entry of default against Mason for October 22, 2020, at 8:20 a.m. No appearance is necessary if the default has been entered and a default judgment packet has been submitted to the Clerk by no later than two court days before the hearing.

Counsel for plaintiffs shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court. A copy of this tentative decision (if adopted by the Court as its final ruling) may be attached to and incorporated by reference in any such proposed order in lieu of copying same verbatim in the body of the document.